



1 P R O C E E D I N G S

2 THE COURT: All right. Final case, Case No. 7-272,  
3 United States of America versus Jorge Gustavo Arevalo-Kessler.

4 MR. HIPPARD: Claude Hippard for the United States,  
5 Your Honor.

6 MR. SILLAS: Eduardo Sillas for Mr. Jorge  
7 Arevalo-Kessler.

8 THE COURT: Good morning, gentlemen.

9 All right. Let the record reflect that the  
10 defendant is present and has an interpreter who will be  
11 interpreting the proceedings. Right?

12 THE INTERPRETER: No, Your Honor.

13 THE COURT: Doesn't need an interpreter?

14 THE INTERPRETER: He's not using the headset to help  
15 him. He understands English.

16 THE COURT: All right. All right. Thank you.

17 All right. You do not need an interpreter this  
18 morning, correct, sir?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Very good. Thank you.

21 This is a sentencing hearing in your case, and I  
22 want to start by briefly describing to you the Court's  
23 sentencing procedures.

24 The Supreme Court has held in the *Booker* case  
25 that the sentencing guidelines are advisory and not mandatory

1 for judges. *Booker* requires a sentencing court to consider the  
2 guideline ranges, but it permits the Court to tailor the  
3 sentencing in light of other statutory concerns as well.

4 The Court, in the exercise of its sentencing  
5 discretion, therefore, will rely on the factors set out in  
6 Section 3553(a) to fashion an appropriate sentence in your case  
7 to achieve the Congressionally mandated purposes of sentencing  
8 as set forth in the Sentencing Reform Act of 1984.

9 The Court will endeavor to faithfully apply the  
10 directives within the guidelines in their entirety to determine  
11 the total offense level and the criminal history category under  
12 the guidelines. Thereafter, the Court will exercise its  
13 discretion to determine the appropriate sentence.

14 In doing so, the Court will give considerable  
15 weight to the sentencing range calculated under the guidelines.  
16 Any comments by the Court in the course of this sentencing are  
17 not to be construed as an indication that the Court in fact  
18 believes that the guidelines are mandatory or that they  
19 constrain the Court's ultimate sentencing discretion.

20 The standard of proof for factual findings in  
21 connection with sentencing is preponderance of the evidence.  
22 And in determining whether that standard is met, historically,  
23 a presentence report is generally considered sufficiently  
24 reliable to be used by the trial court as evidence in making  
25 the factual determinations which are required under the

1 Sentencing Guidelines.

2 Now, in your case, I have reviewed the  
3 presentence report which was prepared by the probation  
4 department.

5 I think the Government has no objections,  
6 correct, Mr. Hippard?

7 MR. HIPPARD: That is correct, Your Honor.

8 THE COURT: All right. I did review the objections  
9 which were filed on behalf of the defendant, specifically with  
10 respect to Paragraph 50 and the amount of relevant conduct in  
11 terms of the amount of money that the defendant is held  
12 responsible for laundering.

13 And also, I think -- did you object also to his  
14 role as a manager?

15 MR. SILLAS: That's correct, Your Honor.

16 THE COURT: All right. Let's see. I've also reviewed  
17 the Government's motion, 5K motion, which you've received a  
18 copy of, Mr. Sillas?

19 MR. SILLAS: Yes, I have, Your Honor.

20 THE COURT: And I also have been handed this morning  
21 some letters --

22 MR. SILLAS: That's correct.

23 THE COURT: -- written on behalf of the defendant,  
24 which I have taken the opportunity to review. And all of that  
25 will be made part of the record in this case.

1                   Mr. Sillas, would you like to be heard on the  
2 objections that you have filed?

3                   MR. SILLAS: Yes, with the Court's permission.

4                   THE COURT: Yes.

5                   MR. SILLAS: Thank you. May I proceed, Your Honor?

6                   THE COURT: Certainly.

7                   MR. SILLAS: Judge, first and foremost, I'd like to  
8 beg the Court's patience. Mr. Kessler has a severe hearing  
9 problem. So, if we run into a situation where I have to repeat  
10 myself or he would request the Court to repeat itself, I don't  
11 want the Court to be of the opinion that he's disrespecting  
12 you; but he does have a hearing problem. It's referenced in  
13 the presentence report.

14                   Very briefly, Judge, I've been representing Mr.  
15 Kessler now for approximately nine months, and he has been  
16 visited no less than 20 times at the Federal Detention Center  
17 and also at the Joe Corley Unit.

18                   Now, we are -- my client was originally indicted  
19 back in June 28th of 2007. There was a superseding indictment  
20 that came down on May 29th of 2008. The charge for which Mr.  
21 Kessler was ultimately responsible for was conspiracy to  
22 launder money instruments.

23                   Now, this specific charge has a 20-year cap.  
24 And, consequently, after reviewing the PSR, we became concerned  
25 based on the fact that the monetary amount that was used in

1 determining how many base offense levels he would be increased  
2 was considerable in view of the fact that it was \$7 million and  
3 above.

4           However, we would like to point out to the Court  
5 that when we were rearraigned, there was a plea agreement and  
6 the plea agreement became part of the record and it was  
7 referenced in the plea agreement that the amount that was  
8 referenced in the agreement, and it was our understanding, was  
9 an amount that was less than the \$7 million that divides  
10 whether my client gets a 20-level increase versus an 18-level  
11 increase.

12           So, our position is that we agreed with the  
13 Government that there was a plea agreement and that the amount  
14 stated in the plea agreement was, in fact, \$5.1 million versus  
15 the \$8.1 million that are referenced in the offense report.

16           I would suggest to the Court, with all due  
17 respect, and also to the Federal Government, that that was the  
18 benefit or that was the basis for the bargain that we executed  
19 the contracts at the time. We realize that under Rule 11 the  
20 Court is not bound or obligated to honor the plea agreement  
21 that we had. We would merely point out to the Court that we  
22 would like the Court to recognize the fact that we relied on  
23 the fact that \$5.1 million, okay, was what we bargained for.

24           And with that being said, I know that a two base  
25 offense level may not seem like a whole lot, but when you get

1 up into the high end of the guidelines, it ends up being  
2 substantial. That would be our first objection with respect to  
3 the monetary amount.

4 THE COURT: All right.

5 MR. SILLAS: Now, we had a second objection, with the  
6 Court's permission.

7 THE COURT: Uh-huh.

8 MR. SILLAS: The second objection basically dealt  
9 with -- well, let me go back with the Court's permission, back  
10 to the first objection.

11 I would further go ahead and present to the Court  
12 that this incident that took place supposedly in a foreign  
13 jurisdiction was in Panama. That was way back in 2002. I  
14 would like to inform the Court that Mr. Kessler was not  
15 arrested as a result of whatever was found at the airplane --  
16 or in the airplane.

17 Now, Mr. Kessler flew that plane in on October  
18 the 28th of 2002, and it wasn't until 15 days later that that  
19 plane was discovered -- that that plane supposedly had some  
20 proceeds from drug distribution that were found secreted  
21 somewhere within one of the wings of the plane.

22 At end of the day, the Court needs to be aware  
23 that present with the defendant were three other individuals:  
24 a co-pilot and, I believe, a navigator, and a passenger, a  
25 passenger who was Mr. Sanabria. And Mr. Sanabria was before

1 Judge Lee Rosenthal. His case, Mr. Sanabria's case, is a  
2 related case to Mr. Kessler's case. And I share that with you  
3 to take me into the second objection.

4 The second objection is that my client, in our  
5 opinion, was not a manager. On that specific day, the day that  
6 the plane had some mechanical problems in Panama, Mr. Sanabria  
7 was there managing the operation of the Flores-Cacho drug  
8 trafficking organization.

9 With that being said, we would suggest to the  
10 Court that my client was simply a chain or -- correction -- a  
11 link in the chain and was simply following orders. My client,  
12 being the captain of the airplane, stayed there for  
13 approximately 15 to 20 days until all of the repairs were  
14 secured on the plane. He did not leave. It was Mr. Sanabria  
15 who had concerns, whatever concerns they were, but he  
16 immediately left after the plane had the mechanical malfunction  
17 and ultimately was seized.

18 We're of the opinion, and we're asking this  
19 Court, that my client not be classified as a manager, number  
20 one. Number two, we're also of the opinion that -- we're  
21 asking this Court to go ahead and allow my client to receive  
22 the benefit of the bargain of the plea agreement and, that is,  
23 that he be accounted -- or accountable for less than 7 million  
24 and, more specifically, at 5.1 million.

25 THE COURT: All right. Thank you, Mr. Sillas.



1 MR. SILLAS: Thank you, Judge.

2 THE COURT: Mr. Hippard, I know you filed a written  
3 response to the objections. Is there anything you'd like to  
4 say?

5 MR. HIPPARD: Your Honor, pretty much it's all been  
6 put before the Court in writing without reiterating everything.  
7 You know, I stand on what has been filed with the Court, and I  
8 concur with the findings of the probation office, Mr. Renteria.  
9 All of that being said, I mean, I have filed a motion for 5K,  
10 which pretty much means you get to do whatever you want. So --

11 THE COURT: Don't I always get to do that?

12 MR. HIPPARD: Of course, Your Honor. In any event,  
13 taking things into consideration, you know, for where the Court  
14 wants to go with this, you know, the Government understands.  
15 But it is what it is and management is management and the  
16 dollar amount, whether it's relevant conduct is relevant  
17 conduct. And I think the PSR is correct in its findings.

18 THE COURT: All right. I'm going to overrule your  
19 objections based upon what I see in the presentence report and  
20 also the response filed by the probation department to your  
21 objections and Mr. Hippard's response. However, I am going to  
22 grant the Government's motion for downward departure in this  
23 case.

24 MR. SILLAS: Yes, Your Honor.

25 THE COURT: In the grand scheme of things, I'm not

1 sure it really makes a lot of difference, but I am going to  
2 adopt the presentence report. And these would be the Court's  
3 guidelines findings and legal conclusions:

4           The total offense level is a 38 with a criminal  
5 history category of I. That yields a recommended period of  
6 imprisonment of 235 to 240, which is the max in federal prison,  
7 a period of supervised release of two to three years, a fine  
8 range of 25,000 to 16,282,180, and a special assessment of  
9 \$100.

10           Now, I have reviewed the Government's 5K motion  
11 in this case. So, I understand the Government's position with  
12 respect to sentencing is a hundred and --

13           MR. HIPPARD: -- 56 months.

14           THE COURT: 156 months, based on the 5K.

15           All right. Mr. Sillas, what is your position  
16 with respect to sentencing?

17           MR. SILLAS: Judge, a couple of things with respect to  
18 sentencing. First of all, I would like to call the Court's  
19 attention to the fact that my client was detained from April  
20 7th, Judge, of 2008 based on an open warrant for an indictment  
21 that was issued out of the Southern District of Texas.

22           My client, if you take into consideration the  
23 time that he was, quote, unquote, detained on April 7th when he  
24 went into the U.S. Embassy on an open warrant, that would mean  
25 that he would be entitled to 33 months. The Court should also

1 be informed of the fact that during the 33 months that he was  
2 incarcerated, he was in solitary confinement.

3           When he arrived to the United States -- or I  
4 should say, when he was first arrested, he was weighing 250,  
5 260. When he left the solitary confinement, 24 months after  
6 the whole process worked its way through, my client arrived  
7 here looking like a prisoner of war, weighing about 130 to 140  
8 pounds, if that much. He had ulcers on his feet. You could  
9 see the bones on his ribcage. He's been through a lot during  
10 the whole process.

11           He was at a maximum security prison in Mexico at  
12 a place called -- I think it's called Almoloya or Altaloya.  
13 And recognizing that, I would ask the Court to go ahead and  
14 give my client the 33 months based on what's written in the PSR  
15 report. And I would call the Court's attention to the specific  
16 location where that information is stated in the PSR report. I  
17 believe that would be Page 16, Judge, Item No. 74. And I think  
18 the Court's electronic information clearly reflects the dates  
19 of the indictments, of the first indictment and the superseding  
20 indictment.

21           The other thing that I would ask the Court to  
22 consider is the fact that my client does have a severe hearing  
23 problem. Having spent two years in a maximum security prison,  
24 I'm sure, was a substantial amount of punishment for him. He  
25 has, in fact, been available and has participated in

1 discussions with the Federal Government. Therefore, as  
2 evidenced by the Government's request for the 5K1, I'd ask the  
3 Court to entertain, in view of his two-year incarceration in  
4 solitary confinement, that the Court also take into  
5 consideration the medical problems that he has.

6 I believe that's all at this time, Judge. And I  
7 know that my client is wanting to go ahead and take advantage  
8 of his opportunity for allocution and visit with the Court for  
9 a few minutes with the Court's permission.

10 THE COURT: All right. Thank you, Mr. Sillas.

11 MR. SILLAS: Thank you, Judge.

12 (Defendant responding in English without the aid of the  
13 interpreter:)

14 THE DEFENDANT: Okay. With all respect, Your Honor,  
15 and I want to thank you for this opportunity to speak.

16 All this time I've been incarcerated here in the  
17 Federal Detention Center, I saw many of the people preparing  
18 speeches for me. They -- they can't hear sentence. Actually,  
19 I have talked to them. And all these black days, I have  
20 thinking I'm -- I'm praying and I just asking the Lord to  
21 get -- be near and speak with truth. And the only thing I want  
22 to let you know, Your Honor, is that I have time to think about  
23 what I did. What I did -- I did was wrong. But any time, in  
24 any way -- I mean, I didn't try -- I didn't think to help  
25 anybody. I was acting, blinded by the greed, trying to -- you

1 know, a misunderstanding way to give a better life to my  
2 family, which became the worst way of life to my family. I  
3 haven't watched my children for three years. So, that was a  
4 wrong decision. And I'm completely aware that I make some -- I  
5 make wrong things, and I'm really -- I'm really sorry. I'm  
6 really apologize. And I ask to apologize to the people that  
7 you represent. I mean, what can I tell -- what can I say? I  
8 know I did wrong, and I really am apologize.

9 THE COURT: All right.

10 MR. SILLAS: Your Honor, this case is very unique in  
11 many ways. Here you have a very well-educated man who reached  
12 the level of a captain in the Mexican Air Force. He not only  
13 was a captain but he also trained so many hundreds of pilots  
14 for the Mexican Air Force, number one.

15 Number two, Mr. Kessler is 46 years of age. He  
16 has his wife and his two children waiting for him. He's had  
17 the opportunity to travel all over the world. Before he got  
18 involved in this six- to seven-month conspiracy, he had been  
19 offered a job with the Emeritus -- or Emirates Airlines. So  
20 that ought to tell you, to be able to fly that kind of a plane,  
21 that tells you what kind of talents that Mr. Jorge Kessler  
22 possesses.

23 Not only is he a Mexican, a national, but he's  
24 also a German citizen. He's got dual citizenship. He has had  
25 so many privileges given to him because of his education and

1 his ability to fly the planes. I mean, he's flown fighter  
2 pilot -- or piloted fighter planes. He's flown commercial  
3 jets, small and large. Unfortunately, like he said, he was  
4 blinded by the greed and got himself in the situation that he  
5 got himself into.

6 I don't want the Court to be of the opinion that  
7 he has spent his time idle while he's been at the Federal  
8 Detention Center. I think the certificates that are before the  
9 Court clearly indicate that he does have a tremendous talent.  
10 He's very well read. He speaks three different languages. And  
11 I think that if the Court is compassionate enough to give him  
12 the credit that he deserves, I think he will ultimately leave  
13 here and go back to his country and continue to be a productive  
14 citizen. That's it, Judge.

15 THE COURT: Hope you're right. I hope you're right.

16 MR. SILLAS: That's correct.

17 THE COURT: Mr. Hippard, the period of time that he  
18 was incarcerated in Mexico from April of '08 to February of '10  
19 is 22 months. Do you have any objection to him --

20 MR. HIPPARD: The Government has no objection to him  
21 receiving credit for that time served.

22 THE COURT: All right. And then he obviously will get  
23 credit -- certainly get credit from the Bureau of Prisons from  
24 the period of time that he's been in custody here in the United  
25 States from February 24th up until now, which is a period of a

1 little bit less than a year. So, he'll get credit for that  
2 automatically through the Bureau of Prisons. But I need to  
3 give him the credit on the 22 months; otherwise, I don't think  
4 the Bureau of Prisons will do that. But I will.

5 MR. SILLAS: Thank you, Your Honor.

6 THE COURT: All right.

7 All right. Then after considering the advisory  
8 guidelines and the 5K motion that the Government has filed in  
9 this case, it's the Court's opinion that pursuant to the  
10 Sentencing Reform Act of 1984, the defendant is committed to  
11 the custody of the Bureau of Prisons to be imprisoned for a  
12 term of 156 months less 22 months' credit for the period of  
13 time he was incarcerated in Mexico, which would be -- check my  
14 math. Is that 134?

15 MR. SILLAS: That's correct, Your Honor.

16 THE PROBATION OFFICER: That's correct, Your Honor.

17 THE COURT: All right. 134 months as to Count 1S.

18 Upon release from imprisonment, the defendant  
19 shall be placed on supervised release for a term of three  
20 years.

21 Within 72 hours of release from the custody of  
22 the Bureau of Prisons, the defendant shall report in person to  
23 the probation office in the district to which the defendant is  
24 released.

25 While on supervised release, the defendant shall

1 not commit another federal, state, or local crime, shall comply  
2 with the standard conditions that have been adopted by this  
3 Court, abide by any mandatory conditions required by law, and  
4 shall comply with the following additional conditions:

5           The defendant shall not possess a firearm,  
6 ammunition, destructive device, or any other dangerous weapon.

7           If deported, the defendant is not to reenter the  
8 United States illegally. If the defendant is deported during  
9 the period of supervised release, supervision by the probation  
10 officer becomes inactive. If the defendant returns to the  
11 United States, the defendant must report immediately to the  
12 nearest U.S. Probation Office. Supervision by the probation  
13 officer reactivates automatically upon the defendant's  
14 reporting.

15           The defendant shall also cooperate in the  
16 collection of a DNA sample from the defendant if the collection  
17 of such a sample is authorized.

18           It is further ordered that the defendant shall  
19 pay to the United States a special assessment of \$100.

20           The Court finds that the defendant does not have  
21 the ability to pay a fine, however, and therefore the Court  
22 waive the fine in this case.

23           The \$100 special assessment is due immediately  
24 through the United States District Court, Southern District of  
25 Texas.



1                   Mr. Kessler, I do need to advise you of your  
2 rights to appeal. You can appeal your conviction if you  
3 believe that your guilty plea was unlawful or involuntary or if  
4 there was some other fundamental defect in the proceedings that  
5 was not waived by your plea of guilty. Under certain  
6 circumstances, a defendant also has the right to appeal the  
7 sentence. However, a defendant may waive his appeal rights as  
8 part of a plea agreement. And you have entered into a plea  
9 agreement in this case which waives some or all of your rights  
10 to appeal. These waivers are generally enforceable, but if you  
11 believe the waiver is not valid, you can present that theory to  
12 the Court of Appeals.

13                   If you do file an appeal in this case, the appeal  
14 must be filed within 14 days of the entry of judgment. If you  
15 cannot afford to pay the costs on appeal, you can ask to  
16 proceed without paying costs. And you have the right to have  
17 an attorney appointed to represent you on appeal if you cannot  
18 afford an attorney.

19                   I have a motion here by the Government to dismiss  
20 Counts 2, 3, and 6; and I'll sign that. Those counts are  
21 dismissed.

22                   All right. Mr. Hippard, is there anything else  
23 from the Government?

24                   MR. HIPPARD: Nothing further, Your Honor.

25                   THE COURT: All right. Mr. Sillas?

1 MR. SILLAS: Yes, Judge. My client has just suggested  
2 to me to ask the Court to see if the Court could make a  
3 recommendation that he be sent to Seagoville.

4 THE COURT: I will make that recommendation. The  
5 Bureau of Prisons is not necessarily going to abide by that,  
6 but I will recommend it, yes.

7 MR. SILLAS: Thank you, Judge.

8 THE COURT: All right. And good luck to you, sir.

9 MR. SILLAS: May I be excused, Your Honor?

10 THE COURT: Yes, you may.

11 MR. HIPPARD: Thank you, Your Honor.

12 THE COURT: Thank you.

13 (Concluding at 10:47 a.m.)

14

15 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE  
16 RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER, TO THE BEST  
OF MY ABILITY.

17

ANITA G. MANLEY  
OFFICIAL COURT REPORTER

8/19/15

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